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303 NLRB No. 18

D--2018
Honolulu, HI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LAKE CITY MANAGEMENT

and

Cases 37--CA--2834 and
37--CA--2853

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 556, AFL--CIO

May 24, 1991

DECISION AND ORDER

Chairman Stephens and Members Cracraft and Raudabaugh

Upon charges filed by the Union, Service Employees International Union, Local 556, AFL--CIO, on March 30 and May 24, 1990, the General Counsel of the National Labor Relations Board issued a consolidated complaint against Lake City Management, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent has failed to file an answer.

On February 27, 1991, the General Counsel filed a Motion for Summary Judgment. On February 28, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not

filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service ''all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Acting Regional Director for Region 20, by letter dated August 10, 1990, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a State of Washington corporation, provides labor services under contract to the United States Department of Defense from its offices and places of business at Fort Shafter and Schofield Barracks, Oahu, Hawaii. In the course of its business at these facilities, it annually performs labor services valued in excess of $200,000 for the United States Army and it purchases and receives products, goods, and materials valued in excess of $1500 directly from points located outside the State of Hawaii; thus, its operation has a substantial impact on the national defense of the United States. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

On March 9, 1990, a majority of the Respondent's employees in the following appropriate unit selected the Union as their representative for purposes of collective bargaining:

> All full-time and regular part-time employees employed by the Respondent at the Fort Shafter and Schofield Barracks commissaries; excluding management employees, guards and supervisors as defined in the Act.

On March 20, 1990, the Union was certified as the exclusive collective-bargaining representative of the above-described unit. At all times since March 9, 1990, the Union, under Section 9(a) of the Act, has been the exclusive representative for collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

On or about March 22 and April 9, 16--17, 23, 25--27, and 30, 1990, by telephone and March 27, April 19, and May 18, 1990, by letter, the Union requested the Respondent to bargain. Since on or about May 11, 1990, and continuing to date, the Respondent has failed and refused, and continues to fail and refuse, to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit. On or about March 21 or 22, 1990, the Respondent, through its owner Earl Smith, bypassed the Union and dealt directly with employees at the Schofield Barracks commissary breakroom, by informing them that a minimum of five employees would have to sign up to obtain fringe benefits. On or about March 27, 1990, the Respondent unilaterally reduced employee breaks from 15 to 10 minutes.

On or about the week of March 19, 1990, the Respondent, through Project Manager Marvin Jackson, at an employee's home, informed employees that fellow employees could lose their jobs because they engaged in union and/or other protected concerted activities.

On or about March 27, 1990, the Respondent reduced employee breaks as described above, and on or about April 5, 1990, the Respondent discharged employee Nancy Villalon. These two actions were taken because employees joined, supported, or assisted the Union and engaged in protected concerted activities and in order to discourage employees from engaging in these or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

On the basis of the foregoing uncontested allegations, we find that the Respondent has been engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act.

Conclusions of Law

1. By bypassing the Union on March 21 or 22, 1990, and dealing directly with employees on matters concerning their terms and conditions of employment; by unilaterally reducing employees' break periods on March 27, 1990; and by refusing since about May 11, 1990, to bargain with the Union as its employees' exclusive collective-bargaining representative, the Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By discharging Nancy Villalon on April 5, 1990, and reducing employees' break periods on March 27, 1990, because employees engaged in union and/or protected concerted activities and in order to discourage employees from engaging such activities, the Respondent has violated Section 8(a)(3) and (1) of the Act.

3. By threatening employees on March 19, 1990, that they could lose their jobs because they engaged in union and/or other protected concerted activities, the Respondent has violated Section 8(a)(1) of the Act.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed and refused to meet and bargain with the Union, has acted unilaterally in altering employees' terms and conditions of employment, and has dealt directly with employees rather than through their designated collective-bargaining representative, we shall order it to meet and bargain on request with the Union, to return breaktimes to their original duration, and to afford the Union an opportunity to bargain before making any changes in the employees' terms and conditions of employment.

Having found that the Respondent discriminatorily discharged Nancy Villalon, we shall order it to offer her immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed. We shall also order the Respondent to make her whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of her discharge to the date of proper offer of reinstatement, less any net interim earnings, as prescribed in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). In addition the Respondent shall remove from its files any reference to the unlawful discharge of Nancy Villalon and notify her in writing that this has been done and that the discharge will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Lake City Management, Fort Shafter and Schofield Barracks, Oahu, Hawaii, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 556, AFL--CIO, making unilateral changes in employees' terms and conditions of employment, and dealing directly with employees with regard to their terms and conditions of employment.

(b) Discharging employees because they engage in protected concerted or union activities.

(c) Threatening employees with job loss because they engage in protected concerted or union activities.

(d) Making employee break periods shorter in retaliation for their having engaged in protected concerted or union activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit. The appropriate unit is:

> All full-time and regular part-time employees employed by the Respondent at the Fort Shafter and Schofield Barracks commissaries; excluding management employees, guards and supervisors as defined in the Act.

(b) Give the Union notice of any contemplated changes in the employees' terms and conditions of employment and afford it an opportunity to bargain about such changes.

(c) Restore employee breaktimes to their original duration.

(d) Offer Nancy Villalon immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the decision.

(e) Remove from its files any reference to the unlawful discharge of Nancy Villalon and notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facilities at Fort Shafter and Schofield Barracks, Oahu, Hawaii, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are

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[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 24, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 556, AFL--CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT engage in direct dealing with unit employees in derogation of the role of the Union as the exclusive representative for collective bargaining.

WE WILL NOT make unilateral changes in employees' terms and conditions of employment.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted or union activities.

WE WILL NOT threaten employees with job loss because they engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed by us at the Fort Shafter and Schofield Barracks commissaries: excluding management employees, guards and supervisors as defined in the Act.

WE WILL give the Union notice of any contemplated changes in our employees' terms and conditions of employment and afford it an opportunity to bargain about such changes.

WE WILL restore your breaktimes to their original duration.

WE WILL offer Nancy Villalon immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position,

without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge less any net interim earnings, plus interest.

WE WILL notify Nancy Villalon that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

LAKE CITY MANAGEMENT

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 300 Ala Moana Boulevard, Room 7318, Honolulu, Hawaii 96850-4980, Telephone 808--551--2814.